

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: February 03, 2017

+ W.P.(C) 11027/2016 & CM 43091/2016

MOHINDER PAL SINGH

..... Petitioner

Through: Mr. S.C. Varma, Mr. Narottam
Vyas, Advocates.

versus

UPENDER PASWAN & ORS

..... Respondents

Through: Mr. Hari Kishan, Advocate for
Respondent No.1 along with
Respondent No.1 in person.
Mr. Vinod Kumar Goyal, Mr.
Abhinav Singh, Mr. Prashant
Tomar, Advocates for
Respondent No.2.
Mr. S. Chadda, Mr. Ishan
Kashyap, Advocates for
Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the order dated 23rd September, 2016 passed by the Commissioner, Employees' Compensation whereby compensation of Rs.10,07,616/- has been awarded to respondent No.1.
2. On 15th February, 2013, respondent No.1 during the course of his employment with the petitioner, suffered an accident due to which his right hand from the wrist joint was cut by the petitioner's machine. Respondent No.1 was taken to Safdarjung Hospital and thereafter

shifted to Kheterpal Nursing Home, Raghuvir Nagar, Delhi where his right hand was amputated. The police registered FIR No. 42 dated 16th February, 2013 against petitioner under Sections 287/338 of IPC. Respondent No.1 filed an application for compensation before the Commissioner, Employees' Compensation in which the petitioner admitted the relationship of employment between the parties on the date of the accident. The petitioner also admitted the accident suffered by respondent No.1 and amputation of his right hand which got stuck in the machine. However, the petitioner attributed the negligence and carelessness to respondent No.1. It was further pleaded that the petitioner got respondent No.1 admitted in the Nursing Home and paid the medical expenses. The petitioner further expressed willingness to keep respondent No.1 in service. The petitioner further pleaded that the petitioner was covered under the ESI Act.

3. During the pendency of the application before the Commissioner, Employees' Compensation, the petitioner compounded the criminal offence under Section 338 of the I.P.C before the Metropolitan Magistrate on 14th December, 2015 upon payment of Rs.1,00,000/- to respondent No.1 on 14th December, 2015.

4. On 16th October, 2014, the petitioner sought closure of the case on the ground that petitioner's unit was covered under ESI Act and respondent No.1 was entitled to benefits under the ESI Act and, therefore, the application was not maintainable under Section 53 of the ESI Act. The petitioner further informed having paid Rs.75,000/- as settlement amount to the respondent No.1. The Commissioner, Employees' Compensation closed the matter in view of the settlement

and further that respondent No.1 would receive benefits under the ESI Act.

5. On 18th February, 2015, respondent No.1 filed an application for restoration of his claim application on the ground that he was not covered under the ESI Act as stated by the petitioner. Vide order dated 30th March, 2015, the Commissioner, Employees' Compensation reopened the case and vide order dated 23rd September, 2016, the claim application of respondent No.1 was allowed and compensation of Rs.10,07,616/- was awarded to respondent No.1 which is under challenge in this writ petition.

6. The petitioner has challenged the impugned order on the ground that the petitioner was covered under ESI Act w.e.f. 08th February, 2013 and the accident dated 15th February, 2013 occurred thereafter and, therefore, respondent No.1 was entitled to the benefits under the ESI Act. It was submitted that the application for compensation was barred by Section 53 of the ESI Act.

7. Learned counsel for respondent No.1 submitted that the writ petition was not maintainable in view of the equally efficacious remedy of appeal under Section 30 of the Employee's Compensation Act. It was further submitted that the petitioner has raised a false claim with respect to its coverage under ESI Act before this Court and, therefore, the petitioner be prosecuted under Section 209 of IPC.

8. ESI Corporation have filed an affidavit dated 07th December, 2016 before this Court in which it is stated that the petitioner applied for its coverage for the first time on 25th February, 2013 i.e. after the accident dated 15th February, 2013 (*Annexure R1*); the accident report

was submitted for the first time on-line on 22nd May, 2013 and the hardcopy was submitted in the Branch Office on 23rd May, 2013 (*Annexure R3*). ESI Corporation rejected the petitioner's claim on 27th June, 2013 and it was communicated to the petitioner on 17th July, 2013 (*Annexure R4*). Relevant portion of the affidavit is reproduced hereunder:-

"2. That I have gone through the records of the petitioner firm which have revealed following facts.

(a) That the Employees State Insurance Corporation after 2010 has implement project Panchdeep wherein after, various actions such as registration, generation of Challan, generation insurance card etc. can be done by the employer at his own end from the online portal of the Employees State Insurance Corporation.

(b) That the petitioner herein for the first time submitted a self-declaration by an online application on 25.02.2013 for getting his unit covered under the Employees State Insurance Act.

(c) That on the basis of the information furnished by him, registration letter dated 25.02.2013 in form C-11 was also got generated online by him. Copy of the said letter was forwarded to the petitioner on 15.05.2013 for the first time and the copy of the same is Annexed as Annexure R-1.

(d) That the employer herein on the basis of C-11 generated by him at his end, vide his letter dated 26.02.2013 also submitted form 01 along with relevant documents. Though the employer claims to have mentioned about some accident at his premises being revealed this letter, however, a bare perusal of said letter dated 26.02.2013 as well as form 01 would revealed that no clear declaration or information is furnished by the employer by stating that when such alleged accident has accrued and/or who had met with the said accident. It is apparent from the conducted of the petitioner that his whole attempt was to shift his liability upon ESIC by hook

or by crook. Copy of the form 01 vide letter dated 26.02.2013 is Annexed as Annexure R-2.

(e) That the petitioner herein thereafter submitted the accident report informing about an accident which allegedly occurred at his premises even before he had applied for registration, the said accident report was submitted for the first time online on 22.05.2013 and the hard copy of the same was submitted with the concerned branch office on 23.05.2013. Copy of the accident report is Annexed as Annexure R-3.

(f) That the said claim of the petitioner herein was rejected by the competent authority vide communication dated 27.06.2013 which was also informed to the petitioner herein vide letter dated 17.07.2013. Copy of the letter dated 17.07.2013 and 27.06.2013 are collectively annexed as Annexure R-4(Colly).

(g) That thereafter the petitioner herein remained mum for almost more than a year and somewhere from the month of August 2014 started filing one application after another in connection with the above issue. All the said communications were duly replied by the answering corporation and it was categorically informed vide each communications that the case for employment injury has been rejected as "Registration of factory under ESIC got done after the occurrence of accident".

(h) That vide its letter dated 21.10.2014 one Pragatisheel Engineering and General Mazdoor Union on behalf of the employee (Respondent No.1) of the petitioner represented for the first time that the employer while appearing in the proceedings before the Commissioner, Workmen Compensation had informed them about the coverage of the employee under ESIC and accordingly they prayed for release of benefits to the employee. Copy of the letter dated 21.10.2014 is annexed herein as Annexure-R-5.

(i) That in response to the said letter, the corporation vide its letter dated 11.11.2014 informed the said employee/union that the case of the employee stood rejected as the coverage of the factory was got done after

the occurrence of the accident. Copy of the letter dated 11.11.2014 is annexed as Annexure-R-6.

3. That it is humbly submitted that the petitioner herein has concealed all the above material facts and have not approached this Hon'ble Court with clean hands. The petitioner has not only attempted to play fraud with the answering respondent as shown above he has even not come clean before this Hon'ble Court. The present petition is abuse of process of law and is devoid of any merit and therefore liable to be dismissed with heavy costs."

9. ESI Corporation have submitted the relevant documents with respect to the petitioner's coverage as Annexure R1 to R6 along with the affidavit dated 07th December, 2016. ESI Corporation has also submitted verified copy of the entire record.

10. On careful consideration of the submissions made by the petitioner and the record of the Corporation, this Court is satisfied that the petitioner was not covered under the ESI Act on the date of the accident i.e. 15th February, 2013. The petitioner applied for registration of its unit by an on-line application on 25th February, 2013. ESI Corporation, therefore, rightly rejected the petitioner's claim on 27th June, 2013. The rejection of the petitioner's claim has not been challenged by the petitioner and has, therefore, attained finality. The claim of respondent No.1 is therefore, not barred by Section 53 of ESI Act.

11. There is no merit in this writ petition. This writ petition is dismissed.

FEBRUARY 03, 2017
ak

J.R. MIDHA, J.